

## BEFORE THE ARIZONA STATE BOARD OF PHARMACY

In the Matter of:

Investigation Case Number 04-0031-PHR

James Alan Edwards Jr.  
 Holder of License No. 4031  
 for Technician Trainee  
 In the State of Arizona,

Respondent

**CONSENT AGREEMENT AND ORDER  
 FOR SUSPENSION and PROBATION**

RECITALS

In the interest of a prompt and judicious settlement of this case, consistent with the public interest, statutory requirements and the responsibilities of the Arizona State Board of Pharmacy ("Board") and under A.R.S. §§ 32-1901 *et. seq.* and 41-1092.07(F)(5), JAMES ALAN EDWARDS Jr. ("Respondent"), holder of technician trainee license number 4031 to work as a technician trainee in the State of Arizona, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as a final disposition of this matter.

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that he has a right to a public administrative hearing concerning the above-captioned matter, at which hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

3. Respondent understands that this Consent Agreement or any part of the agreement may be considered in any future disciplinary action against him.

4. Respondent understands this Consent Agreement deals with Board Investigation

1 Case No. 04-0031-PHR involving allegations of unprofessional conduct against Respondent. The  
2 investigation into these allegations against Respondent shall be concluded upon the Board's  
3 adoption of this Consent Agreement.

4 5. Respondent understands that this Consent Agreement does not constitute a dismissal  
5 or resolution of any other matters currently pending before the Board, if any, and does not constitute  
6 any waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any other  
7 pending or future investigation, action or proceeding. Respondent also understands that acceptance of  
8 this Consent Agreement does not preclude any other agency, subdivision, or officer of this State from  
9 instituting other civil or criminal proceedings with respect to the conduct that is the subject of this  
10 Consent Agreement.

11 6. All admissions made by Respondent in this Consent Agreement are made solely for the  
12 final disposition of this matter, and any related administrative proceedings or civil litigation involving  
13 the Board and Respondent. There fore, any admissions made by Respondent in this Consent  
14 Agreement are not intended for any other use, such as in the context of another regulatory agency's  
15 proceedings, or civil or criminal proceedings, whether in the state of Arizona or in any other state or  
16 federal court.

17 7. Respondent acknowledges and agrees that upon signing this Consent Agreement and  
18 returning this document to the Board's Executive Director, Respondent may not revoke her  
19 acceptance of the Consent Agreement or make any modifications to the document regardless of  
20 whether the Consent Agreement has been signed by the Executive Director. Any modification to this  
21 original document is ineffective and void unless mutually agreed by the parties in writing.

22 8. Respondent understands that the Consent Agreement shall not become effective unless  
23 and until adopted by the Board and signed by its Executive Director.

24 9. If a court of competent jurisdiction rules that any part of this Consent Agreement is  
25 void or otherwise unenforceable, the remainder of the Consent Agreement shall remain in full  
26 force and effect.

10. Respondent understands and agrees that if the Board does not adopt this Consent Agreement, he will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defenses.

11. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board and may be reported as required by law to the National Practitioner Data Bank and the Healthcare Integrity and Protection Data Bank.

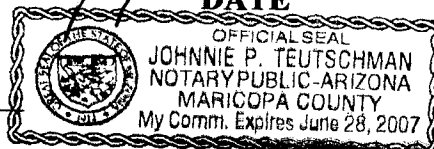
12. Respondent understands that any violation of this Consent Agreement constitutes unprofessional conduct under A.R.S. § 32-1927 (A) (17) (the licensee violated a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its Executive Director pursuant to this chapter) and may result in disciplinary action under A.R.S. § 32-1927.

**REVIEWED AND ACCEPTED BY:**

  
James Alan Edwards Jr.

  
Notary Public

4/1/05  
DATE



### **FINDINGS OF FACT**

By stipulation of the parties, this Consent Agreement is entered into for final disposition of the matters described herein. Respondent admits to the following Findings of Fact:

13. The Board is the duly constituted authority for the regulation and control of the practice of pharmacy in the State of Arizona.

14. The Board possesses jurisdiction over the subject matter and over Respondent as a licensee of the Board under A.R.S. § 32-1901, *et seq.*

15. Respondent is the holder of license 4031 which permits him to work as a technician trainee in the State of Arizona.

16. From August, 2004 until December 7, 2004, Respondent worked as a pharmacy technician trainee at Target Pharmacy #209, located at 740 W. Camelback Road, Phoenix, Arizona.

17. On December 7, 2004, Respondent, while employed as a licensed pharmacy technician trainee, was apprehended removing a Microsoft X-box from Target store #209 without paying for it.

18. On December 7, 2004, Respondent, as a result of a Target investigation, signed a "Team Member Statement", which included his admission that he had also removed, without paying for, the following items from Target store #209 ( see Exhibit " A" Team Member Statement ) :

- a. Half Life 2
- b. Pepperidge Farm Cookies
- c. Zithromax antibiotic capsules
- d. Doritos
- e. Slim-Jims
- f. Dr. Pepper
- g. Spiderman 2 DVD
- h. Tote
- i. Little Debbie Snacks

19. The Target investigation disclosed that Respondent did not have a prescription for Zithromax. Zithromax is an antibiotic and is a prescription-only drug as defined in A.R.S. § 32-1901 (72) to wit :

"Prescription-only drug" does not include a controlled substance but does include:

- (a) Any drug that because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use is not generally recognized among experts, qualified by scientific training and experience to evaluate its safety and efficacy, as safe for use except by or under the supervision of a medical practitioner.
- (b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.
- (c) Every potentially harmful drug, the labeling of which does not bear or contain full and adequate directions for use by the consumer.
- (d) Any drug, other than a controlled substance, required by the federal act to bear on its label the legend "Rx only".

20. Under A.R.S. § 32-1968 (A) A prescription-only drug shall be dispensed only under one of the following conditions:

1. By a medical practitioner in conformance with section 32-1921.
2. On a written prescription order.
3. On an oral prescription order that is reduced promptly to writing and filed by the pharmacist.

21. A.R.S. § 1927.01 (A) (9) provides that the board may revoke or suspend the license of

1 a pharmacy technician or pharmacy technician trainee or place the licensee on probation if the board  
2 determines that the licensee:

3 Is found to be guilty of violating any state or federal law relating to the manufacture and  
4 distribution of prescription-only drugs, controlled substance drugs or medical devices.

5 22. A.R.S. § 32-1927.01 (B) (1) provides that the board may revoke or suspend the license  
6 of a pharmacy technician or a pharmacy technician trainee, place the licensee on probation, censure  
7 the licensee or impose a civil penalty of not more than two hundred fifty dollars for each offense if the  
8 board determines that the licensee:

9 Violated federal or state law relating to marijuana, prescription-only drugs, narcotics,  
10 dangerous drugs or controlled substances.

### 11 CONCLUSIONS OF LAW

12 23. The Board is the duly constituted authority for the regulation and control of the practice  
13 of pharmacy in the state of Arizona, under A.R.S. § 32-1901, *et seq.*

14 24. The conduct and circumstances described in the above Findings of Fact constitute  
15 grounds for disciplinary action under A.R.S. § 32-1927.01 (A)(9) and (B)(1) to wit:

16 (A) (9) [ the licensee ] is found to be guilty of violating any state or federal law relating to the  
17 manufacture and distribution of prescription-only drugs, controlled substance drugs or medical  
18 devices.

19 (B) (1) [ the licensee ] violated federal or state law relating to marijuana, prescription-only  
20 drugs, narcotics, dangerous drugs or controlled substances.

### 21 ORDER

22 Based upon the above Findings of Fact and Conclusions of Law and under the authority  
23 granted to the Board under A.R.S. §§ 32-1928, 41-1092.07 (F)(5), and A.A.C. R4-23-122(C)

24 **IT IS HEREBY ORDERED** that:

25 25. Technician trainee License No.4031, which was issued to Respondent to allow him to  
26 work in a pharmacy in the State of Arizona, is hereby **SUSPENDED** for thirty (30) days followed by  
a **PROBATION** for one (1) year, subject to the following conditions :

1           26.     Respondent shall pay a civil penalty of two hundred and fifty dollars (\$250.00 ) by  
2 certified or cashier's check to the Board within sixty (60) days of the date of this Order.

3           27.     Respondent shall obey all federal and state laws and rules governing the practice of  
4 pharmacy.

5           28     Respondent is required to advise the Board immediately of any change in pharmacy  
6 employment status throughout the term of his probation.

7           29.     Respondent is required to furnish all pharmacy employers with a copy of this Board  
8 Order throughout the term of his probation.

9           30.     If Respondent violates this Order in any way or fails to fulfill the requirements of this  
10 Order, the Board, after giving the Respondent notice and the opportunity to be heard, may revoke,  
11 suspend or take other disciplinary actions against the Respondent. The issue of such hearing will be  
12 limited solely to whether this Order has been violated.

13          31.     Respondent shall appear before the Board at a regularly scheduled Board  
14 meeting on or after January 12, 2006 to request that the probation imposed by this Order be  
15 terminated. Respondent's failure to petition the probation shall extend the probation period.  
16

17 **DATED and EFFECTIVE this 16<sup>th</sup> day of June, 2005**

18 **ARIZONA STATE BOARD OF PHARMACY**

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21 Hal Wand, RPh  
22 Executive Director  
23 Arizona State Board of Pharmacy  
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